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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/786,706

Filing Date: February 25, 2004

Appellant(s): SWENSON ET AL.

Christopher L. Johnson (Reg. No. 46,809)

For Appellants

EXAMINER'S ANSWER

This is in response to the appeal brief filed 22 February 2011 appealing from the Office action mailed 26 August 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

1 - The present application contains Claims 1-21. Claims 3, 10, and 19 have been cancelled. Thus, Claims 1-2, 4-9, 11-18, and 20-21 are on appeal.

(4) Status of Amendments After Final

The examiner has no comment on the Appellants statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the Appellants statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the Appellants brief.

(8) Evidence Relied Upon

Exhibit U

2004/0181468

Harmon et al.

09-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims **1-2, 4-9, 11-18** and **20-21** are rejected under 35 U.S.C. 101 because the claimed invention is not directed to a secondary statutory subject matter/class.

A claimed process is eligible for patent protection under 35 U.S.C. § 101 if:

"(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. See Benson, 409 U.S. at 70 ('Transformation and reduction of an article 'to a different state or thing' is the clue to the patentability of a process claim that does not include particular machines.'). Diehr, 450 U.S. at 192 (holding that use of mathematical formula in process 'transforming or reducing an article to a different state or thing' constitutes patent-eligible subject matter); see also Flack, 437 U.S. at 589 n.9 ('An argument can be made [that the Supreme] Court has only recognized a process as within the statutory

definition when it either was tied to a particular apparatus or operated to change materials to a 'different state or thing'); *Cochrane v. Deener*, 94 U.S. 780, 788 (1876) ('A process is...an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing.').⁷ A claimed process involving a fundamental principle that uses a particular machine or apparatus would not pre-empt uses of the principle that do not also use the specified machine or apparatus in the manner claimed. And a claimed process that transforms a particular article to a specified different state or thing by applying a fundamental principle would not pre-empt the use of the principle to transform any other article, to transform the same article but in a manner not covered by the claim, or to do anything other than transform the specified article." (*In re Bilski*, 88 USPQ2d 1385, 1391 (Fed. Cir. 2008))

As noted in *Bilski*: "[A] Process claim that recites fundamental principle, and that otherwise fails 'machine-or-transformation' test for whether such claim is drawn to patentable subject matter under 35 U.S.C. §101, is not rendered patent eligible by mere field-of-use limitations; another corollary to machine-or-transformation test is that recitation of specific machine or particular transformation of specific article does not transform unpatentable principle into patentable process if recited machine or transformation constitutes mere 'insignificant post-solution activity.'" (*In re Bilski*, 88 USPQ2d 1385, 1385 (Fed. Cir. 2008)) Examples of insignificant post-solution activity include data gathering and outputting. Furthermore, the machine or transformation must impose meaningful limits on the scope of the method claims in order to pass the machine-or-transformation test. Please refer to the USPTO's "Guidance for Examining Process Claims in view of *In re Bilski*" memorandum dated January 7, 2009, http://www.uspto.gov/web/offices/pac/dapp/opla/documents/bilski_guidance_memo.pdf .

Point of Importance: It is also noted that the mere recitation of a machine in the preamble in a manner such that the machine fails to patentably limit the scope of the

claim does not make the claim statutory under 35 U.S.C. § 101, as seen in the Board of Patent Appeals Informative Opinion *Ex parte Langemyr et al.* (Appeal 2008-1495), <http://www.uspto.gov/web/offices/dcom/bpai/its/fd081495.pdf>.

Furthermore, Claims 1-2, 4-9, 11-18 and 20-21 are not directed toward statutory subject matter. The claims are directed toward a charitable cause, movement, or expression which incites feelings within individuals. Gathering flags is the only functionality that is positively recited. The Applicants have argued that a transformation occurs in that the flags are posted and continually removed and altered. The Examiner does not agree that this is a physical transformation which satisfies any of the grounds of the 35 U.S.C. 101 statutes.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 11-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Referring to Claims 11-12: Claims 11-12 recite the limitations: " ... obtaining a person, [and] ... obtaining an organization ... ".

The Examiner notes that such limitations per Applicants require clarification. It is not clear how one can "obtaining a person, [and] ... obtaining an organization"?

This evidence, taken as a whole, shows that the invention, as claimed, was both in "public use" and "knowledgeable" prior to 6 February 2004.

Referring to Claims 1 and 20-21: Exhibit U teaches a method for raising funds for a charitable cause comprising the steps of: identifying a charitable cause in need of funding (Exhibit U: Pages 1-2//The need for funding here is represented by assisting troops across the country//); selecting a graphic layout for a healing field that is comprised of a plurality of flags positioned in a predetermined pattern (Exhibit U: Pages 1-2, 4-5); transforming a selected location by erecting the plurality of flags at the selected location to comprise the healing field (Exhibit U: Pages 1-2, 5); linking a display of the healing field to the charitable cause in need of funding by carrying out a public awareness campaign to associate the charitable cause with the healing field (Exhibit U: Pages 1-2); displaying the healing field as part of the public awareness campaign, and selling at least some of the plurality of flags that are displayed in the healing field after a predetermined display period to raise additional funds for the charitable cause in need of funding, and thereby removing the plurality of flags from the selected location (Exhibit U: Pages 1-2, 4-5).

Exhibit U, however, does not expressly discuss obtaining one or more sponsors to fund the charitable cause through paying for the plurality of prior to their display.

Harmon, in a similar environment, shows multiple fund raising events (a healing field is an example of such type of fundraising event) temporarily occupying a location (for a period of time) not dedicated to providing a permanent display (Harmon: Page 1,

Paragraphs 0004-0008); obtaining one or more sponsors to fund the charitable cause through paying for the plurality of prior to their display (Harmon: Figure 2; Page 1, Paragraphs 0004-0008; Claims 1-3). Further, regarding removing the plurality of flags after a predetermined display period to eliminate the healing field from the location, the Examiner notes that this would obviously take place if the healing field even were held at certain times of the year or at certain locations, etc.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method of Exhibit U with the features causing the charity fund raising event to be periodic/temporary and allowing at least a portion of proceeds to go to the charitable cause in need of funding for the purpose of further inhibiting charitable giving and create better manners to solicit funds for charitable causes/events (Harmon: Page 1, Paragraphs 0002-0008).

Referring to Claim 2: Exhibit U discloses a method, wherein the step of designating the graphic layout for the healing field further comprises the step of identifying a historical event to be symbolized by the plurality of flags (Exhibit U: Pages 1-2, 4-5//The 'historical event' mentioned is the support which will be provided by assisting in this/these efforts is/are shown//).

Referring to Claim 4: Exhibit U discloses a method, wherein the predetermined pattern could be that of a geometric nature (Exhibit U: Pages 1-2, 5//The reference discloses plans for a "Field of Honor" containing over one-hundred granite memorial markers, as well as a "Flags of Freedom Monument" containing state and colonial flags located around 5 pools forming the shape of a star//).

Referring to Claim 5: Exhibit U teaches a method, wherein the predetermined pattern could be that of a linear array placed along an area selected from the group consisting of a path, a body of water, a river, a building, a structure, a road, a highway, a trail, a hill, a mountain, and a military base (Exhibit U: Pages 1-2, 5).

Referring to Claim 6: Exhibit U discloses a method further comprising the step of incorporating information within the predetermined pattern (Exhibit U: Pages 1-2, 5).

Referring to Claim 7: Exhibit U shows a method, further comprising the step of incorporating a graphic message within the predetermined pattern (Exhibit U: Pages 1-2, 5).

Referring to Claim 8: Exhibit U discloses a method, wherein the step of linking a display of the healing field to the charitable cause further comprises the step of advertising a purpose for the plurality of flags and the healing field, wherein the purpose links the plurality of flags and the healing field to the charitable cause (Exhibit U: Pages 1-2, 4-5//The website disclosed herein serves as a means of advertisement for such a charitable cause//).

Referring to Claims 9 and 17-18: Exhibit U in view of Harmon teaches the limitations of Claim 1.

Exhibit U in view of Harmon, however, does not expressly discuss a method, wherein the step of advertising the purpose for the plurality of flags and the healing field further comprises the step of advertising through a medium selected from the group consisting of radio stations, television stations, newspapers, magazines.

The Examiner notes that advertising via the means selected from the group consisting of radio stations, television stations, newspapers, magazines are common, old, and well known in the art. Exhibit U itself shows internet advertising and in some respect features either radio and television, advertising (See the message from Commander-in-Chief mention). Therefore, it would be obvious to utilize, in addition to the present website, additional avenues of promoting (i.e. radio stations, television stations, newspapers, magazines) the healing field fundraising event.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method and system of Exhibit U for a flag healing field fundraising event with an even greater ability to promote this fundraising event via radio stations, television stations, newspapers, and/or magazines for the purpose of enabling a vast majority of people to support such a charitable cause (Exhibit U: Pages 4-5).

Referring to Claims 11-12: Exhibit U shows a method, wherein [obtaining] the one or more sponsors further comprises [obtaining] a person that pays to sponsor one or more flags in the plurality of flags (Exhibit U: Pages 1-2, 4-5//The sites allow an individual, company, and/or organization to sponsor the fundraising event//).

Referring to Claim 13: Exhibit U teaches a method, wherein the step of selling the plurality of flags further comprises the step of selling the plurality of flags through an auction (Exhibit U: Pages 4-5//The site composes an auction type feature/functionality which allows sponsorship of the fundraising event in that a bid or purchase price has been established and agreed upon once the healing field goes into effect//).

Referring to Claim 14: Exhibit U discloses a method, wherein the auction is an internet auction (Exhibit U: Pages 4-5//The site is accessible via the internet//).

Referring to Claim 15: Exhibit U shows a method, wherein the step of selling the plurality of flags further comprises the step of selling the plurality of flags through an advertising campaign (Exhibit U: Pages 1-2, 4-5//The site is an advertising campaign//).

Referring to Claim 16: Exhibit U discloses a method, wherein the step of selling the plurality of flags further comprises the step of placing advertisements near the healing field (Exhibit U: Pages 1-2, 4-5//The usage of the site is the main avenue for sales for the fundraising campaign, however, additional sponsorship near the healing field assists in helping to accomplish the fundraising goal//).

(10) Response to Argument

The Appellants argue:

A. Rejections Under 35 U.S.C. § 101

The Examiner has rejected independent claims 1 and 21 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Independent claims 1 and 21 are not tied to a particular machine. However, the process recited in the claims does include a transformation. Particularly, the process involves the operations of: selecting a graphic layout for a healing field that is comprised of a plurality of flags positioned in a predetermined pattern; and transforming a selected location by erecting the plurality of flags at the selected location to comprise the healing field ... Thus, a graphic layout can be designed to arrange the flags for a selected location, such as a public park, around a public or private building, along a lake, a river, a path, or another location that would allow the public to view the healing field. (See specification, page 4, lines 9-12). The selected location can then be transformed by erecting the plurality of flags at the

selected location to comprise the healing field. As anyone who has seen a large healing field displayed can attest, the physical transformation can be breathtaking when an empty park or field is transformed to a healing field displaying hundreds or thousands of flags arranged in a geometric pattern. The Appellants strongly assert that the transformation of an empty location into a field of flags cannot be considered mere insignificant post-solution activity, as suggested by the Examiner. Rather, the transformation process of creating the field of flags is integral to the entire invention. Without the creation of the field of flags, the present invention will not function as a method for raising funds for a charitable cause. Moreover, in the recent *Bilski* decision, the Court held that the machine-or-transformation test does not define what is (and is not) a patentable process. Rather, the Court held that the machine-or-transformation offers "a useful and important clue, an investigative tool, for determining whether some claimed inventions are processes under § 101. The machine-or-transformation test is not the sole test for deciding whether an invention is a patent-eligible process". In re *Bilski*, 561 U. S. at Syllabus, page 2 or Kennedy Opinion, page 8 (2010). Thus, even a finding that the transformation of the selected location into a field of flags is not considered a transformation, as recited in *Bilski*, would not result in a finding that claims 1 and 21 are directed to non-statutory subject matter. One thing that all nine justices in the *Bilski* decision agreed upon is that *Bilski's* method of hedging risk was not patentable because it was an abstract idea just like the algorithms at issue in *Benson* and *Flook*. Appellants submit that: first, independent claims 1 and 21 of the present application are not directed toward non-statutory subject matter such as laws of nature, natural phenomena, mathematical algorithms, etc.; and second, the claims are narrowly tailored and are not so broad as to encompass other technologies or areas of technologies not contemplated and/or not supported by the written description. Specifically, independent claim 1 is directed to a method for raising funds for a charitable cause. The claims include, in part, the narrowly tailored limitations identifying a charitable cause, selecting a graphic layout for a healing field, obtaining one or more sponsors to fund the charitable cause through paying for the plurality of flags, transforming a selected location by erecting the plurality of flags, linking a display of the

healing field to the charitable cause, displaying the healing field, and selling at least some of the plurality of flags. Claim 21 includes similarly tailored limitations. Thus, in view of the U.S. Supreme Court decisions in *Flook*, *Benson*, *Diehr*, *O'Reilly*, and *Bilski*, the claims of the present application are narrowly tailored and are not abstract. Therefore, Appellants submit that the rejection of independent claims 1 and 21 and dependent claims 2, 4-9 and 11-18 under § 101 should be overturned.

1. The Examiner does not find this argument to be persuasive and

discusses the argument in detail below:

The Examiner notes that Claims 1-2, 4-9, 11-18 and 20-21 are not directed toward statutory subject matter. The claims are directed toward a charitable cause, movement, or expression which incites feelings within individuals. Gathering flags is the only functionality that is positively recited. The Applicants have argued that a transformation occurs in that the flags are posted and continually removed and altered. The Examiner does not agree that this is a physical transformation which satisfies any of the grounds of the 35 U.S.C. 101 statutes.

The Appellants further argue:

B. Rejections Under 35 U.S.C. § 112

Claims 11 and 12 were rejected as being indefinite under § 112, 2nd paragraph. Specifically, the Examiner stated that the terms "obtaining a person" in claim 11 and "obtaining an organization" are not clear and require appropriate correction. Claims 11 and 12 provide additional limitations on the element of Claim 1 that recites "obtaining one or more sponsors to fund the charitable cause through paying for the plurality of flags prior to their display." Claim 11 recites "wherein obtaining the one or more sponsors further comprises obtaining a person that pays to sponsor one or more flags in

the plurality of flags." Similarly, claim 12 recites "wherein obtaining the one or more sponsors further comprises obtaining an organization that pays to sponsor one or more flags in the plurality of flags. The specification discloses that "[s]ponsors may even go door to door, educating people and businesses about the field of flags and what it represents. Sponsorship of flags in the healing field is not limited to individuals. Churches, clubs, organizations, businesses, and corporations can sponsor single flags or groups of flags." (Page 3, lines 27-30). Under MPEP 2111.01, construing the terms to mean exactly what they say, it is clear to a person of ordinary skill in the relevant art that claim 11 refers to a sponsor that is an individual person, while claim 12 refers to obtaining a sponsor that is an organization. Based on the language of the claim, and the teachings of the specification, this is the only clear meaning.

2. The Examiner does not find this argument to be persuasive and discusses the argument in detail below:

The Examiner notes that Applicants previous amendments to Claims 1 and 21 in regards the originally asserted 35 U.S.C. 112 1st Paragraph Rejection. As such, the Examiner has removed the 35 U.S.C. 112 1st Paragraph Rejections. The Examiner acknowledges the Applicants amendments to Claims 1 and 21 in regards the originally asserted 35 U.S.C. 112 2nd Paragraph Rejection. Although the Applicants have amended the claims, the Examiner has noticed further 35 U.S.C. 112 2nd Paragraph Rejections in view of the amendments made in efforts to overcome the currently outstanding 35 U.S.C. 112 2nd Paragraph Rejections. The Examiner notes that such limitations per Applicants require clarification. It is not clear how one can "obtain[ing] a person, [and] ... obtain[ing] an organization"?

The Appellants further argue:

C. Rejections Under 35 U.S.C. § 103 (a)

The Exhibit U reference discloses a permanent memorial-type structure and place of visit, namely a planned 30 acre national park and museum dedicated to the honor of the U.S. flag. (See page 1). The reference discloses plans for a memorial containing over one-hundred permanent granite memorial markers, as well as a "Flags of Freedom Monument" containing state and colonial flags located around 5 pools forming the shape of a star. However, Exhibit U does not teach or suggest identifying a charitable cause in need of funding, as recited in independent claim 1. Nor does Exhibit U teach or suggest a sponsor that initially pays for flags to be displayed in a field, followed by selling the flags displayed in the field to raise additional funds. Indeed, there is no discussion in Exhibit U about selling flags or other objects that were previously purchased through donations from sponsors. Any income raised in Exhibit U is limited to donations made for permanent display of the of the memorial markers. Thus, a display such as the national park and museum disclosed in Exhibit U would very likely not be considered by one skilled in the art to be used for fund raising efforts such as breast cancer, child abuse, and so forth. Accordingly, the only type of fund raising discussed in Exhibit U is raising funds to build the exhibit itself. In contrast to the teachings of Exhibit U, claim 1 of the present application recites, in part, the operation of identifying a charitable cause in need of funding. (See page 2, lines 32-32). The charitable cause can be a wide variety of different subjects. For example, the specification provides examples related to church congregations, communities, cities, states, or a nation. The charitable cause can relate to historical figures, the fight against diseases such as cancer or muscular dystrophy, and so forth. The method recited in claim 1 can be used to raise funds for a wide number of charitable causes rather than being limited to donations for the construction of a specific park or museum as taught in Exhibit U. Thus, Exhibit U does not teach or suggest the ability to identify a charitable cause in need of funding. Claim 1 further recites the operation of obtaining one or more sponsors to fund the charitable cause by paying for a plurality of flags. At least some of the plurality of flags that are displayed in the healing field are then sold after the field of flags has been displayed for an appropriate amount of time to allow the public to

become familiar with the purpose behind the healing field. (See specification, page 4, lines 27-30). The flags are sold to raise additional funds for the charitable cause in need of funding. This provides additional fund raising ability for a charity than the traditional method disclosed in Exhibit U. In addition, by selling the flags to additional donors when the display period of the healing field is completed, the public awareness of the charitable cause is further spread. Flags are often used to commemorate emotional events because they promote an emotional response in people. Once the healing field has been taken down, the flags can be displayed at numerous locations by different purchasers, enabling public attention to the charitable cause to be furthered even after the healing field is taken down. Thus, the present method can be used both to increase the profits that can be donated to the charitable cause, as well as to increase the public attention to the charitable cause. (See specification, page 5, lines 4-10). Exhibit U only discloses a traditional fundraising method. Particularly, Exhibit U discloses that bricks can be sold for \$50.00 to help fund the construction of the project. When a brick is purchased, the purchaser's information, such as name, city, and state can be printed on the brick. The brick can then be placed along a path in the planned park discussed in Exhibit U. The brick cannot be removed from the permanent park or purchased by another party. Indeed, removing the brick would destroy the path. In addition, another party would not want to purchase a brick with someone else's personal information inscribed thereon. Moreover, the idea of inscribing personal information is typically used to encourage people to donate (i.e. purchase a brick) so that their personal information can be on permanent display. Thus, if the brick were removed and sold, it would eliminate the incentive for a donor to purchase a brick in the first place. Thus, Exhibit U teaches against the invention recited in claim 1 of having a donor purchase a flag, displaying the flag, and then later selling the flag. The Harmon reference does not overcome the limitations of Exhibit U. The Harmon reference discloses a method of funding a charity in which an item associated with a charity is sold at a first price to a first buyer, and then resold at an increased price to a second buyer, with portions of each sale donated to the charity. Harmon gives several examples of items used to fund a charity, such as tickets to concerts or sporting events

that may increase in price due to issues of limited supply and high demand. For example, a popular rock concert or sporting event may have more demand than supply. (See Harmon, ¶ [0028]). This imbalance between supply and demand can create a condition in which the ticket may be purchased for a first price and resold at an increased price. (See Harmon, ¶[0031]). However, the method disclosed in Harmon is limited to a typical market conditions in which the demand significantly outstrips supply for a selected item. In many types of charitable causes, such as cancer, chronic illnesses, veterans associations, military tributes, and so forth, the law of supply and demand does not create a market condition in which an item can continue to be sold at an increasing cost. In contrast to the teachings of Harmon, in the present application, as recited in claim 1, an object is not sold to a first buyer, with the option to resell the object to a second buyer at a higher price. Rather, claim 1 provides that one or more sponsors are used to fund the charitable cause by paying for a plurality of flags prior to their display. The sponsors do not own the flags, with the ability to resell them at a higher price to make money for themselves and/or others. Rather, the sponsors donate money to provide the flags that make the field of flags display possible by paying for the flags prior to their display. In many fundraising situations, charities cannot afford to purchase hundreds, or thousands of flags for display in a healing field. The sponsor donations make it possible to display the flags at a selected location. Neither Harmon nor Exhibit U teach or suggest a sponsor donating to purchase flags prior to their display in a healing field for an identified charitable cause.

3. The Examiner does not find this argument to be persuasive and discusses the argument in detail below:

The Examiner wishes to clarify and better point out where within the Exhibit U and Harmon prior art references where such material as claimed in the instant application can be found to teach such limitations as rejected in the Final Office Action (mail date: 26 August 2010) on appeal. Please see/refer to the chart below:

CLAIM & LIMITATION	REFERENCE # 1	REFERENCE # 2
	Exhibit U	Harmon et al. (2004/0181468)
	teaches this limitation at:	teaches this limitation at:
1 and 20-21		
A method for raising funds for a charitable cause comprising the steps of: identifying a charitable cause in need of funding;	(Exhibit U: Pages 1-2//The need for funding here is represented by assisting troops across the country//)	NOT RELIED UPON TO TEACH THIS LIMITATION
selecting a graphic layout for a healing field that is comprised of a plurality of flags positioned in a predetermined pattern;	(Exhibit U: Pages 1-2, 4-5)	NOT RELIED UPON TO TEACH THIS LIMITATION
transforming a selected location by erecting the plurality of flags at the selected location to comprise the healing field;	(Exhibit U: Pages 1-2, 5)	NOT RELIED UPON TO TEACH THIS LIMITATION
linking a display of the healing field to the charitable cause in need of funding by carrying out a public awareness campaign to associate the charitable cause with the healing field;	(Exhibit U: Pages 1-2)	NOT RELIED UPON TO TEACH THIS LIMITATION
displaying the healing field as part of the public awareness campaign, and selling at least some of the plurality of flags that are displayed in the healing field after a predetermined display period to raise additional funds for the charitable cause in need of funding, and thereby removing the plurality of flags from the selected location.	(Exhibit U: Pages 1-2, 4-5)	NOT RELIED UPON TO TEACH THIS LIMITATION
obtaining one or more sponsors to fund the charitable cause through paying for the plurality of prior to their display;	NOT RELIED UPON TO TEACH THIS LIMITATION	(Harmon: Figure 2; Page 1, Paragraphs 0004-0008; Claims 1-3//Regarding removing the plurality of flags after a predetermined display period to eliminate the healing field from the location, the Examiner notes that this would obviously take place if the healing field even were held at certain times of the year or at

Art Unit: 3684

		certain locations, etc.)
2		
a method, wherein the step of designating the graphic layout for the healing field further comprises the step of identifying a historical event to be symbolized by the plurality of flags.	(Exhibit U: Pages 1-2, 4-5//The 'historical event' mentioned is the support which will be provided by assisting in this/these efforts is/are shown//)	NOT RELIED UPON TO TEACH THIS LIMITATION
4		
a method, wherein the predetermined pattern could be that of a geometric nature.	(Exhibit U: Pages 1-2, 5//The reference discloses plans for a "Field of Honor" containing over one-hundred granite memorial markers, as well as a "Flags of Freedom Monument" containing state and colonial flags located around 5 pools forming the shape of a star//)	NOT RELIED UPON TO TEACH THIS LIMITATION
5		
a method, wherein the predetermined pattern could be that of a linear array placed along an area selected from the group consisting of a path, a body of water, a river, a building, a structure, a road, a highway, a trail, a hill, a mountain, and a military base.	(Exhibit U: Pages 1-2, 5)	NOT RELIED UPON TO TEACH THIS LIMITATION
6		
a method further comprising the step of incorporating information within the predetermined pattern.	(Exhibit U: Pages 1-2, 5)	NOT RELIED UPON TO TEACH THIS LIMITATION
7		
a method, further comprising the step of incorporating a graphic message within the predetermined pattern.	(Exhibit U: Pages 1-2, 5)	NOT RELIED UPON TO TEACH THIS LIMITATION
8		

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a method, wherein the step of linking a display of the healing field to the charitable cause further comprises the step of advertising a purpose for the plurality of flags and the healing field, wherein the purpose links the plurality of flags and the healing field to the charitable cause.	(Exhibit U: Pages 1-2, 4-5//The website disclosed herein serves as a means of advertisement for such a charitable cause//)	NOT RELIED UPON TO TEACH THIS LIMITATION
11 and 12		
a method, wherein [obtaining] the one or more sponsors further comprises [obtaining] a person that pays to sponsor one or more flags in the plurality of flags.	(Exhibit U: Pages 1-2, 4-5//The sites allow an individual, company, and/or organization to sponsor the fundraising event//)	NOT RELIED UPON TO TEACH THIS LIMITATION
13		
a method, wherein the step of selling the plurality of flags further comprises the step of selling the plurality of flags through an auction.	(Exhibit U: Pages 4-5//The site composes an auction type feature/functionality which allows sponsorship of the fundraising event in that a bid or purchase price has been established and agreed upon once the healing field goes into effect//)	NOT RELIED UPON TO TEACH THIS LIMITATION
14		
a method, wherein the auction is an internet auction.	(Exhibit U: Pages 4-5//The site is accessible via the internet//)	NOT RELIED UPON TO TEACH THIS LIMITATION
15		
a method, wherein the step of selling the plurality of flags further comprises the step of selling the plurality of flags through an advertising campaign.	(Exhibit U: Pages 1-2, 4-5//The site is an advertising campaign//)	NOT RELIED UPON TO TEACH THIS LIMITATION
16		

a method, wherein the step of selling the plurality of flags further comprises the step of placing advertisements near the healing field.	(Exhibit U: Pages 1-2, 4-5//The usage of the site is the main avenue for sales for the fundraising campaign, however, additional sponsorship near the healing field assists in helping to accomplish the fundraising goal//)	NOT RELIED UPON TO TEACH THIS LIMITATION
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As a preliminary matter Appellant is reminded that patents are written by and for skilled artisans. See e.g. *Vivid Technologies, Inc. v. American Science and Engineering, Inc.*, 200 F.3d 795, 804, 53 USPQ2d 1289, 1295 (Fed. Cir. 1999) ("patents are written by and for skilled artisans"). Thus, the Examiner therefore starts with the presumption that Appellant is a skilled artisan who possess at least ordinary skill in the art. Consequently, it is the Examiner's position that because the patent references of record are directed to those with ordinary skill in this art; these references are clear, explicit, and specific as to what they teach. The Exhibit U and Harmon references, at least, when combined, teach or suggest all of the elements of independent claim 1. Specifically, the Exhibit U in combination with the Harmon reference does teach that a sponsor (buyers/sellers) initially pays for an item [flag] via a graphic layout followed by selling the item to raise additional funds for a selected charity. The Exhibit U reference discloses a planned 30 acre national park and museum dedicated to the honor of the U.S. flag. (See at least: Exhibit U: Page 1). The reference goes on to disclose plans for a "Field of Honor" containing over one-hundred granite memorial markers, as well as a "Flags of Freedom Monument" containing state and colonial flags located around 5 pools forming the shape of a star. Harmon, in a similar environment, however, does

teach or suggest a sponsor that initially pays for a charitable event prior to its commencement, with at least a portion of proceeds being donated to the charitable cause (Harmon: Figure 2; Page 1, Paragraphs 0004-0008; Claims 1-3). Harmon allows for an option embodiment where the reselling of an item can be for a greater price and thus can be attributed to the present invention, as recited in claim 1. Applicants have stated that the freedom field of Exhibit U is permanent; however, the Examiner notes that NOWHERE within Exhibit U does it say that the freedom field is permanent. In fact, it seems that the closest the Applicants can come to in regards the freedom field being permanent is in that they mention that Exhibit U makes remarks toward the fact that future generations can see the field. The Examiner notes that this comment does in no way certify that this reference to future generations being able to view the freedom field mean that the freedom field is permanent, for, is it not true that via pictures, etc. one can pass on items of sentimental value, etc.? Thus, this idea that the freedom field of Exhibit U being permanent is disputed. Once again, regarding the motivation to combine the Exhibit U and Harmon prior art references, the Examiner notes that KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. [Please see KSR, 127 S. Ct. at 1741, 82 USPQ2d at 1396 for further guidance]. See also:

In re Dembiczak, 50 USPQ2d 1614 (Motivation to Combine): We have noted that evidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved.

In re Keller, 208 USPQ 871 (CCPA 1981) (Motivation Not Found in References):
[The] Test of obviousness is not whether features of secondary reference may be bodily incorporated into primary reference's structure, nor whether claimed invention is expressly suggested in any one or all of references; rather, test is what combined teachings of references would have suggested to those of ordinary skill in art.

(11) Related Proceeding(s) Appendix

1. The Examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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